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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,453	12/12/2003	Chris Lacombe	2277.02	9685

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,453

Applicant(s)

LACOMBE ET AL.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12 December 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2 – 4 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,589,341 to Clark et al. (as cited by Applicants).

3. Re – claim 2, Clark et al. disclose an apparatus for suppressing a blast from an explosive device, comprising: a) a containment structure, having an inlet orifice; and b) means for injecting flowable foam material into said container through said inlet orifice, see claims 1 – 19, for example.

4. Re – claim 3, Clark et al. further disclose wherein said containment structure is constructed of plastic sheeting, see col. 10, line 26.

5. Re – claim 4, Clark et al. further disclose wherein said containment structure can be folded. It has been held that the recitation that an element is “capable of” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138. In this case, “can be folded” is the same as “is capable of being folded”, which 1) plastic sheeting disclosed by Clark et al. presumably is, and 2) does not constitute a limitation in any patentable sense.

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6. Alternatively, claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,864,767 to Drumgoole et al.

7. Re – claim 2, Drumgoole et al. discloses the claimed invention including an apparatus for suppressing a blast from an explosive device, comprising: a) a containment structure 10, having an inlet orifice 21; and b) means for injecting, set forth at col. 5, line 41, flowable foam material into said container through said inlet orifice.

8. Re – claim 1, in view of the structure disclosed by Drumgoole et al., the method would have been inherent, since it is the normal and logical manner in which the device could be used.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. as applied above.

11. Re – claim 5, Clark et al. disclose the invention substantially as claimed except for the plastic sheeting being 3-mil visquine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select 3-mil visquine, since it is a readily, commercially available plastic sheeting with a multitude of uses, and, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ

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416. In this case, since Clark et al. disclose the use of plastic sheeting, one of ordinary skill in the art at the time the invention was made would have no trouble selecting 3-mil visquine, or any other equivalent, as a suitable material.

12. Alternatively, claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drumgoole et al. as applied above.

13. Re – claim 3, Drumgoole et al. disclose the claimed invention including the use of well-known plastic comprised material, such as, KEVLAR, DYNEEMA, and SPECTRA, set forth at col. 4, line 41, except for the structure being constructed of plastic sheeting. Since the above trademarks are for HDPE (High Density Polyethylene) fibers woven into fabrics, which are then, in a sense, ‘plastic sheets’, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute plastic sheeting for the plastic fabrics, since they are art recognized and functional equivalents. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select plastic sheeting, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In this case, since Drumgoole et al. disclose the use of plastic sheeting, one of ordinary skill in the art at the time the invention was made would have no trouble selecting 3-mil visquine, or any other equivalent, as a suitable material.

14. Re – claim 4, as indicated above, “can be folded” is the same as “is capable of being folded”, which 1) the plastic fabric disclosed by Drumgoole et al. presumably is, and 2) does not constitute a limitation in any patentable sense.

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15. Re – claim 1, Clark et al. discloses the claimed invention including a method for suppressing a blast from an explosive device comprising: a) positioning a containment structure near said explosive device, wherein said containment structure has an inlet orifice; b) connecting a conduit, to said inlet orifice of said containment structure; and c) injecting flowable foam material through said conduit and into said container, substantially filling said container and covering said explosive device with said flowable foam material, see claims 1 – 19, for example. However, Clark et al. do not disclose d) disconnecting the conduit from the orifice. It would have been obvious to one of ordinary skill in the art at the time the invention was made to disconnect the conduit, since doing such would be normal and logical manner in which the device could be used.

Claim Rejections - 35 USC § 112

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

18. Claim 1 recites the limitation "said container" in lines 5, 6 and 8 (3X). There is insufficient antecedent basis for this limitation in the claim.

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Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

9/23/04

A handwritten signature in black ink, appearing to read 'Teri P. Luu', with a stylized flourish at the end.

**TERI P. LUU
SUPERVISORY PRIMARY EXAMINER**